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No. 79-630

IN THE

Supreme Court of the United States

OCTOBER TERM 1979

NELSON BUNKER HUNT, HERBERT HUNT, AND LAMAR HUNT,

Petitioners,

v.

COASTAL STATES GAS PRODUCING COMPANY AND COASTAL STATES MARKETING, INC.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

COASTAL STATES GAS PRODUCING COMPANY and COASTAL STATES MARKETING, INC. (hereinafter sometimes collectively referred to as "Coastal States") respectfully submit their Brief in Opposition to the Petition of Nelson Bunker Hunt, Herbert Hunt and Lamar Hunt (hereinafter sometimes collectively referred to as "Hunt") for a Writ of Certiorari to the Supreme Court of Texas.

JURISDICTION

Coastal States disputes that this Court has jurisdiction to hear the case at bar. The statute pursuant to which Hunt attempts to invoke the Court's jurisdiction, 28 U.S.C. § 2101(c)[1], is not a jurisdictional statute, but a purely procedural one.

[1] See Hunt's Petition for Writ of Certiorari, p. 2.

This Court would have jurisdiction only if the decision of the Supreme Court of Texas were to fit the narrowly circumscribed jurisdictional boundaries of 28 U.S.C. § 1257(3), which it does not. The decision of the Supreme Court of Texas does not call into question the validity of any United States treaty or statute, as is required by § 1257(3). Nor is Hunt claiming any title, right, privilege or immunity specially set up or claimed under the Constitution, treaties or statutes of the United States, an addiional category of § 1257(3).

Federal law that will support federal question jurisdiction may be the Constitution, a United States statute, an administrative regulation, or a treaty. Wright, *Handbook of the Law of Federal Courts* 58 (1970). The act of state doctrine is a judicial doctrine of restraint, and is not the type of federal law that supports federal question jurisdiction. In addition, Hunt does not seek to claim a right conferred by the act of state doctrine, but in fact seeks to avoid its application.

Although the Hickenlooper Amendment, which carves out an exception to the act of state doctrine, is a United States statute, the validity of the Hickenlooper Amendment has not been drawn into question by the Texas courts in deciding the instant case. The Texas courts have held that the Hickenlooper Amendment simply does not apply to the instant case because Hunt never had any title or right to any property, a prerequisite to the applicability of the amendment. Petitioners in this case suffer from the same confusion for which the Fifth Circuit faulted appellants in *Occidental of Umm al Qayuayn, Inc.* v. *A Certain Cargo, Etc.*, 577 F.2d 1196 (5th Cir. 1978), *cert. denied* ..... U.S. ....., 99 S.Ct. 2857 (1979). The Court in that case wrote:

> The explanation for appellant's ambiguity with regard to the conversion may be the mistaken conception that the Hickenlooper Amendment in some way provides a cause of action. At most, the amendment is a federal conflicts principle; at least, a mandate to the states to follow state law, not the federal 'act of state' doctrine.

577 F.2d at 1202, n. 11.

This Court's jurisdiction depends upon the existence of a question regarding the validity of a federal law. Using Texas conflict of laws principles, the Texas courts have decided that Libyan law governs the nature of the right acquired by Hunt. Under Libyan law Hunt never acquired title to petroleum in strata, and irrespective of whether the nationalization was wrongful, Libya did not by that means acquire title to anything that Hunt owned that is involved in the instant litigation.[2] Because Hunt never had title to the oil, it was not expropriated, and therefore there is no reason for this Court to address either the act of state doctrine or the Hickenlooper Amendment.

The Court is confronted with a pure conflict of laws question, not a federal question.

QUESTIONS PRESENTED

1. Do the judgments of the state courts rest on adequate state law grounds so that no substantial federal question exists?

2. Should this Court again review the act of state doctrine?

3. Does the act of state doctrine apply to Libya's nationalization of Concession No. 65?

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[2] The nationalization did give Libya title to certain personal property of Hunt, and Hunt ultimately accepted from Libya compensation equal to the net book value of the assets confiscated. (See Point 7 herein).

4. Was Libya's nationalization of Concession No. 65 a "commercial activity"?

5. Is the so-called "Hickenlooper Amendment", 22 U.S.C. § 2370(e)(2), applicable to the facts of this case?

6. Does the so-called *Bernstein* exception exist, and if so should it be applied in this case?

7. Does Hunt's settlement with Libya on the issue of the nationalization prevent him from pursuing Coastal States in conversion in this case?

STATEMENT OF THE CASE

Coastal States disagrees in some respects with statements made by Hunt under Hunt's heading "Statement of the Case."

On page 5 of the Petition, the statement is made that "Hunt and BP paid royalties and taxes to the Libyan Government as provided in the Concession Agreement." This statement is not supported by the record of this case. In fact, Hunt amended his trial pleadings to omit any such allegation to prevent the trial court from entering its order requiring Hunt to produce books and records to Coastal States so that Coastal States could test the accuracy of the allegation.

On pages 6 and 7 of the Petition, Hunt refers to a purported English translation of a radio broadcast delivered in Libya by Colonel Quadhafi, and then concludes that the nationalization was in violation of international law because it was arbitrary, discriminatory, malicious and ordered for political reasons unrelated to any legitimate public purpose. In the first place, the translation of the radio broadcast is pure hearsay and incompetent as evidence of the Libyan Government's motives. Furthermore, Coastal States does not concede, nor has it been decided that the nationalization was in violation of international law. At

most, the Texas courts decided that they were not at liberty to inquire into the quality of Libya's actions in nationalizing the concession.

An additional matter is necessary to complete the statement of facts. On May 19, 1975, Hunt concluded a settlement agreement with the Government of Libya, settling all outstanding matters relating to the Concession Agreement and to the nationalization for a recited consideration of money, equivalent in U.S. dollars to approximately $15,000,000.00. A copy of this Settlement Agreement and Release is reprinted as Appendix D to this Brief in Opposition.

REASONS FOR DENYING THE WRIT

SUMMARY OF THE ARGUMENT

The writ should be denied because the judgment of the Texas Supreme Court does not necessarily rest upon a substantial federal question. Hunt sues for recovery of oil which was not yet produced from the area of the concession on the date of nationalization (i.e. the oil was still in strata), claiming that the nationalization was ineffective to deprive him of the oil. Applying Texas conflicts of law rules, the courts below were referred to the law of Libya. Applying Libyan law, the Texas courts have determined that Hunt never owned the oil, and that therefore it was not taken from him by the nationalization. Accordingly, Coastal States cannot be liable to Hunt in conversion. Properly analyzed, no federal question is involved in the decision of the case, and the Texas courts could reach the same result whatever this Court might say about their interpretations of the act of state doctrine and the Hickenlooper Amendment.

This Court has had ample opportunity to reassess or redefine the act of state doctrine and has chosen not to do

so. No reason appears why the Court, should, in this case, grant the writ and write on the act of state doctrine.

The writ should be denied because, even if a substantial federal question were involved, the judgment of the Texas Supreme Court is correct. The act of state doctrine bars judicial inquiry into the quality of the act of nationalization. Even if the act of state doctrine is inapplicable where a host nation and a concessionaire agree that the rights conferred by the concession are to be determined by a body of law other than that of the host nation, no such agreement exists here. The Concession Agreement clearly demonstrates on its face that it was concluded under the laws of Libya, and Clause 28/7 which Hunt asserts is an "unambiguous agreement regarding controlling legal principles" has no application except in the context of an arbitration proceeding between Hunt and Libya. Furthermore, the act of nationalization was not a purely commercial activity by Libya, but was a traditional act of state as the Second Circuit held in *Hunt* v. *Mobil Oil Corp.*, 550 F.2d 68 (2d Cir.), *cert. denied* 434 U.S. 984 (1977). Finally, the Hickenlooper Amendment has no application because it requires that specific property be expropriated abroad, which property is later brought into the United States and becomes the subject matter of the litigation. Libyan law applies to determine what rights Hunt was granted in unproduced oil under the Concession Agreement. Under Libyan law, Hunt owned no interest in such oil, and therefore the nationalization did not take from Hunt the property which is the subject of this suit. Furthermore, it has not been shown that Coastal States brought any of the oil into the United States.

During the pendency of this litigation, Hunt entered into an agreement with Libya, under the terms of which Hunt accepted compensation from Libya for the nationalization, and released Libya from all liability in connection with the nationalization and the concession. The release forecloses

Hunt's cause of action against Coastal States, because Coastal States' asserted liability is not joint with that of Libya, but derivative from the acts of Libya.

ARGUMENT AND AUTHORITIES

1. The Judgment of the Texas Supreme Court Does Not Involve a Substantial Federal Question.

The judgment of the trial court (Appendix to Petition for Writ of Certiorari D1-4) itself shows adequate non-federal grounds to support the judgments of the courts below, even though the courts below chose, in part at least, to also support their judgments by holding the act of state doctrine applicable and the Hickenlooper Amendment inapplicable. Properly analyzed, this case may be decided without reaching either federal question. This is a conversion case brought in the courts of the State of Texas. It is alleged that Hunt was granted certain rights in and to oil underlying the area of Concession No. 65 by the Concession Agreement. It is further alleged that the conversion took place by an act of nationalization taken by Libya within its own territory, and by the subsequent purchase by Coastal States, in Libya, of oil allegedly converted by means of the nationalization.

In construing rights conferred by contract, Texas courts look to the law of the country where the contract was made and is performable. *Cantu* v. *Bennett,* 39 Tex. 304 (1873). Similarly, in a tort case, the Texas court will refer to the laws of the country where the acts were committed. *Mexican National Railway Co.* v. *Jackson,* 89 Tex. 107, 33 S.W. 857 (1896). The trial court obviously did this by concluding in its judgment:

> Libyan law determines the interest acquired by Hunt in Concession No. 65. (Appendix to Petition for Writ of Certiorari D2).

The trial court then concluded that under Libyan law the grant of the concession did not vest property rights to unproduced oil in Hunt, but only a contract right, and that therefore

> [N]othing taken from Hunt by the said nationalization decree was purchased by Coastal States from Libya pursuant to said contracts.

Both the Texas Court of Civil Appeals (570 S.W.2d 503, 508-509; Appendix to Petition for Writ of Certiorari C9-10) and the Texas Supreme Court (583 S.W.2d 322, 325; Appendix to Petition for Writ of Certiorari A6-7) upheld the trial court's conclusions both as to the applicability of Libyan law and its substantive content. The Texas courts are not alone in their views regarding the content of Libyan law concerning title to the unproduced oil "in strata." The same result was reached by an Italian court in a similar action brought by British Petroleum (hereinafter "BP," a former plaintiff in this case) in Italy, and by the arbitrator in arbitration proceedings instituted by BP following the nationalization of its interest in Concession No. 65. *BP Exploration Co. (Libya) Ltd.* v. *Astro Protector Compania Naviera, S.A.*, Civil Suit No. 2852/21 (Civil Court of Siracusa, Italian Republic, February 15, 1973) and *BP/Libya* v. *The Government of the Libyan Arab Republic*, Gunnar Lagergren, Sole Arbitrator, delivered at Copenhagen, October 10, 1973. An English translation of the Italian court decision is reprinted as Appendix C to this Brief in Opposition. Because of its length (101 legal sized pages), the arbitration award is not reproduced in the Appendix.

Neither a state court's application of foreign law nor the correctness of its application in a conversion action presents substantial questions of federal law. As recognized by the Texas Court of Civil Appeals, these matters are

controlled by "well established Texas conflict of laws rules." (570 S.W.2d 503, 508; Appendix to Petition for Writ of Certiorari C9).

Thus, this conversion action is properly and adequately decided in the first instance by reference to Texas conflict of laws rules, which mandate the application of Libyan law to which Texas law refers the Court. No reference to the act of state doctrine or the Hickenlooper Amendment is necessary, and the state courts could reach the same result even if this Court felt that the Texas Supreme Court was wrong in its writings concerning the act of state doctrine and the Hickenlooper Amendment. Under such circumstances the Court should refuse to review the state court judgment. *Wilson* v. *Loew's Inc.*, 355 U.S. 597, 78 S.Ct. 526, 2 L.Ed.2d 519 (1958); *Herb* v. *Pitcairn*, 324 U.S. 117, 65 S.Ct. 459, 89 L.Ed. 789 (1945). As the Court stated in *Herb*:

> • Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. And our power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of Federal laws, our review could amount to nothing more than an advisory opinion.

324 U.S. at 125-126

2. No Reason Appears Why the Court Should Reassess or Redefine the Act of State Doctrine.

Second, this Court has had at least two recent opportunities to reassess or redefine the act of state doctrine, and has chosen not to do so. In *Alfred Dunhill of London, Inc.* v. *The Republic of Cuba*, 425 U.S. 682, 96 S.Ct. 1854, 48 L.Ed.2d 301 (1976), the Court reaffirmed the viability of the act of

state doctrine in traditional terms and in *Hunt* v. *Mobil Oil Corp.*, 550 F.2d 68 (2nd Cir.) *cert. denied* 434 U.S. 984 (1977), the Court refused to review the Second Circuit's holding that adjudication of the validity of the precise Libyan nationalization involved in this suit was foreclosed by the act of state doctrine. No reason appears why the Court should review the Texas court's judgment which rests on other adequate nonfederal grounds when it refused to review a similar holding by the Second Circuit that was founded solely upon the act of state doctrine.

Hunt pleads, without giving any justification, that the act of state doctrine should be abandoned or become a discretionary rule because it no longer serves the interests of our nation in the light of changing world conditions. It is respectfully submitted that the same reasons exist for the rule today as existed when it was formulated by the Court in 1897 in *Underhill* v. *Hernandez,* 168 U.S. 250, 18 S.Ct. 83, 42 L.Ed. 456 (1897). In *Underhill,* the plaintiff, an American citizen with business interests in Venezuela, sought redress for personal indignities, assaults and affronts committed in Venezuela by an official of the government. In refusing to hear his complaint, the Court stated:

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

168 U.S. at 252.

What reason to abrogate the act of state doctrine can Hunt advance in this case, where it is neither his life nor liberty that was allegedly taken, but mere property? Why

should the courts of the United States no longer be bound to respect the independence of another country? If anything, the world's increasing population, complexity, and interdependence render it even more important today than when *Underhill* was decided to recognize the independence of other sovereigns and to protect the delicate balance on which foreign relations rest. It is respectfully submitted that Hunt has done in his Petition what he has done throughout the history of this litigation. Hunt historically emphasizes the alleged "wrong" of Libya[3] in an attempt to evoke sympathy to cover the weakness of his position.

3. Libya's Nationalization of Concession No. 65 Was An Act of State.

Third, the Court should deny the writ because the judgment of the state court, even if it could be said to depend upon a substantial federal question, is correct because the act of state doctrine applies and no exception to it is applicable.

In *Hunt* v. *Mobil Oil Corp.*, 550 F.2d 68 (2d Cir.) *cert. denied* 434 U.S. 984 (1977), the same three Hunt brothers who are Petitioners before this Court, sued several major oil companies claiming that the latter conspired in violation of the antitrust laws to induce Libya to nationalize Concession No. 65.[4] The Second Circuit there held that it could

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[3] Contrary to Hunt's erroneous assertions, it has not been decided that Libya's nationalization of Concession No. 65 was in violation of international law. At most, it has been decided that the act of state doctrine precludes inquiry into such question.

[4] Contrary to their position in this case, Hunt did not take the position in *Hunt* v. *Mobil* that Libya's action was unlawful, arbitrary or capricious, as the following passages demonstrate:

> The appellants [the Hunt brothers] contend that the act of state doctrine cannot be applicable here because Libya is not named as a defendant, is not designated as a co-con-

not adjudicate Hunt's claim because to do so would necessarily involve an examination of the motives of Libya's nationalizing the Concession, which examination was foreclosed by the act of state doctrine. In a tribute to the ingenuity of counsel, Hunt now claims that the Second Circuit decision in *Hunt* v. *Mobil* has no bearing on this case.

Hunt's attempted distinction is that in *Mobil* no claim was being made under the Concession Agreement, whereas in this case the claim is based upon the Concession. Such is a distinction without a difference. If the nationalization were an act of the Libyan state, it cannot be changed by the purpose for which a private plaintiff is pursuing litigation.

Hunt's argument that the act of state doctrine is inapplicable to this case centers around *Banco Nacional de Cuba* v. *Sabbatino*, 376 U.S. 398, 428, 84 S.Ct. 923, 940, 11 L.Ed.2d 804, 824 (1964), which applied the doctrine "in the absence of *a treaty or other unambiguous agreement regarding controlling legal principles.*" (All emphasis supplied by the writer unless otherwise indicated). Hunt urges that Clause 28/7 of the Concession Agreement is such an "unambiguous agreement" by which Libya agreed to be bound by other than its own internal laws.

Before examining the particular features of Clause 28/7, it should be noted that the *Sabbatino* Court did not explain what it meant by an "unambiguous agreement regarding

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spirator and in fact 'was as much a victim of the conspiracy as was Hunt.'

* * *

Here it is urged that Hunt makes no claim that Libya acted illegally at all, simply that as a matter of fact its 'lawful' act was induced by the unlawful conduct of the named defendants.

* * *

On the contrary, as we have stated, Libya is depicted as the innocent dupe of a domestic conspiracy.

550 F.2d at 75, 76, 79.

controlling legal principles" other than by reference to a treaty as an example of such an agreement. Nor did the Court hold that an agreement such as Clause 28/7 is such an agreement. However, the *Sabbatino* Court exhibited, as has this Court from *Underhill* v. *Hernandez, supra,* through *Alfred Dunhill of London, Inc.* v. *The Republic of Cuba, supra,* extreme caution and reluctance to sit in judgment of the sovereign acts of a foreign nation. The Court is being requested by Hunt to ignore its own teachings and to strain to avoid the application of a doctrine which is basic to our system of separation of powers.

If, however, *Sabbatino* directs that the act of state doctrine not be applied in the face of a concession agreement between a private party and a sovereign nation under which the latter agreed to be bound by laws other than its own, then the question is whether, by entering into the Concession Agreement, Libya agreed to waive the influence of its internal laws on the rights granted by the Concession. In deciding the question, Clause 28/7 may not be lifted out of its context and read as the complete answer. Indeed, Clause 28/7 is only one of several references to controlling law in the Concession Agreement. For example, the Concession Agreement states that it has been concluded under the Petroleum Law of 1955 (Appendix to Petition for Writ of Certiorari F1), which is referred to as "the Law" (Clause 29-Appendix to Petition for Writ of Certiorari F26). Petroleum Law No. 25 of 1955 of Libya appears as Appendix A to this Brief in Opposition. Thereafter there are no fewer than six other references to "the Law" as the controlling law as follows:

1. In Clause 2, the area of the Concession is to reduce progressively in accordance with "the Law."

2. In Clause 4, it is agreed that sums spent in de-

veloping the Concession in excess of that required by "the Law" shall be credited to subsequent periods.

3. In Clause 6, Hunt is obligated to pay surface rents in accordance with "the Law."

4. In Clause 8, Hunt is permitted to consolidate certain earnings with the earnings of other operations being carried out under "the Law."

5. Under Clause 25, any assignee of Hunt's interest must comply with conditions imposed by "the Law."

6. Under Clause 27, Libya is entitled to revoke the Concession for failure to fulfill expenditure obligations imposed by "the Law."

In addition, there is reference in the agreement to several other laws of Libya as controlling the rights and obligations of the parties. Hunt is obligated to obey the income tax laws of Libya (Clause 8). The procedure for paying taxes, rents and royalties is provided by the Financial Laws and Regulations of Libya (Clause 9). Hunt is obligated to obey the Customs Laws of Libya (Clause 10), the Antiquities Laws of Libya (Clause 14) and the Immigration Laws of Libya (Clause 15). If Hunt and a landowner fail to agree on terms for Hunt entering upon the land to conduct operations, Libya is obligated to institute proceedings "under the law from time to time in force." (Clause 14).

The conclusion is thus inescapable that the parties intended the rights granted by the Concession to be governed by the internal laws of Libya. This conclusion is actually reinforced by a contextual examination of Clause 28/7. That provision is the seventh of nine subdivisions in Clause 28. Clause 28 is entitled "Arbitration." Each of the other

eight subdivisions expressly deals with the subject of arbitration. Placed in this context, it is evident that Clause 28/7 comes into play only in the event of arbitration between the parties. Even Dr. Saba Habachy, one of Hunt's retained experts on international and Middle Eastern law, has admitted that Clause 28/7 finds its only relevance in the context of arbitration between the parties to the Agreement.

Such was the holding of the Texas Court of Civil Appeals in this case, which Court stated:

> This clause, however, deals solely with arbitration. It speaks not to the nature of the rights granted and acquired under the concession agreement, but merely to the enforcement of those rights following a breach of the agreement; it deals with remedies, not substantive rights.

Hunt v. *Coastal States Gas Producing Co.*, 570 S.W.2d 503, 509 (Tex. Civ. App. — Houston [14th Dist.] 1978), *aff'd* 583 S.W.2d 322 (Tex. Sup. 1979).

This conclusion that the parties never intended Clause 28/7 to replace Libya's internal law in determining what rights and interests were granted by the Concession is further reinforced by the Clause's history. As originally concluded, Clause 28/7 read as follows:

> This Concession shall be governed by and interpreted in accordance with the Laws of Libya and such principles and rules of international law as may be relevant, and the umpire or sole arbitrator shall base his award upon those laws, principles and rules.

The language quoted by Hunt in the Petition was substituted by later amendment that was not included in Hunt's Appendix. Even in the amended version of Clause 28/7 quoted by Hunt, the primary reference is to Libyan law.

Thus, it is clear from a reading of the Concession Agreement as a whole and contextual examination of Clause 28/7, that the parties did not provide that the internal law of Libya was not to control the rights and interests granted by the Concession. The Agreement was expressly entered into with reference to Libyan law, and the only reference to other law is in the context of arbitration between the parties to the Agreement.

While Hunt boldly asserts that Clause 28/7 is a "perfect example of an 'unambiguous agreement regarding controlling legal principles,' " he very carefully avoids any discussion of what those "controlling legal principles" might be. This is so because such a discussion quickly exposes the illogical nature of Hunt's position. Every contract must be concluded with reference to some definite body of laws. The only references by Clause 28/7 to laws other than Libyan law are to international law and general principles of law. International law, having as its purpose customary control of relations among nations, contains absolutely no rules that speak to what rights, titles or interests are vested by private contract as the following quotations from writings by international experts demonstrate:

> . . . First, the tribunal must decide whether a private party interest exists in the light of domestic law and in whom such interest is vested. This decision necessitates a choice of municipal law. . . .
>
> Secondly, once the preliminary investigation has established the existence of a private law right, the tribunal must decide whether the violation of the right acquired under municipal law constitutes an illegal act under international law.

Lipstein, 29 *Transactions of the Grotius Society* 55-56 (1943).

> . . . In the words of Dr. Lipstein municipal law determines whether a property right has been acquired and whether it is vested in the claimant. International law must decide whether the defendant state is liable for the violation of a property right so acquired.

S. Toriguian, *Legal Aspects of Oil Concessions in the Middle East* 197 (1972).

> Municipal law determines whether a property right has been acquired and whether it is vested in the claimant. International law must decide whether the defendant state is liable for the violation of a property right so acquired, whether the claimant state is entitled to maintain the action in an international court and finally must determine the measure of damages.

B. Wortley, *Expropriation in Public International Law* 15 (1959).

> . . . public international law contains no customary rules as to the private international law of property transaction . . . .

Baade, *Indonesian Nationalization Measures Before Foreign Courts — A Reply,* 54 Am. J. Int'l. L. 801, 802 (1960).

In H. Cattan, *The Law of Oil Concessions in the Middle East and North Africa* 43 (1967), the author concludes that references to incomplete systems such as international law or general principles of law are not exhaustive and that the residuary law of the situs will be applied to questions which cannot be resolved under such incomplete systems.

Thus, even if it were held that Clause 28/7 is a reference to international law or general principles of law, it is probable that something akin to the doctrine of *renvoi* would make Libyan law controlling in deciding the character of the interest acquired by Hunt in unproduced oil by the Con-

cession Agreement, and the *Sabbatino* rationale for application of the act of state doctrine remains.

Finally, even if Clause 28/7 can be said to be an "agreement regarding controlling legal principles" as those words were used in *Sabbatino,* it is respectfully submitted that it is anything but an "unambiguous agreement." Hunt obviously construes the agreement as a complete reference away from the internal laws of Libya. Professor Hans Smit of Columbia University, who opined on behalf of Coastal States at the hearing before the trial court, disagreed. He construed the language to mean that reference is made to general principles of law only when principles of Libyan law are inconsistent with international law. Professor Smit reasons that because international law has no rules to govern the vesting of rights by contract, deed or otherwise, the controlling reference is to Libyan law. H. Cattan, *The Law of Oil Concessions in the Middle East and North Africa* 64 (1967), discussing specifically Libyan concessions granted under the Petroleum Law of 1955, agrees with Professor Smit and would give Libyan law priority unless "inconsistent" with international law. As noted, Cattan further concludes, on page 43 of his work, that in the case of references to incomplete systems, the law of the situs will be applied to questions which cannot be resolved under such incomplete systems.

Thus, it is respectfully submitted that if *Sabbatino* intended the courts to ignore the act of state doctrine where there exists an agreement between a host country and a concessionaire that the rights, titles and interests vested in the concessionaire by the agreement are to be determined by law other than the internal law of the host country, such an agreement does not exist here, and the act of state doctrine has been rightfully held by the lower courts to bar adjudication of Hunt's claims.

4. Libya's Nationalization Of Concession No. 65 Was Not "Commercial Activity."

Hunt's next argument is that the asserted "commercial activity" exception of *Alfred Dunhill of London, Inc.* v. *The Republic of Cuba,* 425 U.S. 682, 92 S.Ct. 1854, 48 L.Ed.2d 301 (1976), applies. Hunt's apparent compulsion to advance this obviously invalid argument bespeaks the weakness of his entire position.[5] Hunt's contention is that by granting the Concession Agreement to him, Libya engaged itself in a "commercial" venture and thereby divested itself of "its sovereign character" in connection with the Concession Agreement. To give credence to such an argument would result, in practical application, in the virtual abolition of the act of state doctrine. Almost every underdeveloped nation allows foreign investments for some sort of gain (be it technological advancement or monetary compensation) which could be considered to be commercial in nature. To argue that a foreign government's allowing United States citizens to invest in exploration and production of natural resources in return for gain results in divesting the government of its sovereign character when it later nationalizes the object of the investment, is, indeed, grasping at straws.

What Hunt intentionally overlooks is that his lawsuit challenges the validity of the act of nationalization by the Libyan Government, and not its trade practices. The act of which Hunt complains is the expropriation, not the Concession Agreement. *Dunhill* does not support such a challenge. The Court's position in *Dunhill* was that the repudia-

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[5] Hunt's position on this issue is again apparently inconsistent with the stance he took in *Hunt* v. *Mobil Oil Corp.,* 550 F.2d 68, *supra.* On page 73 of that opinion, the Court stated:

> Appellants conceded on the oral argument of this appeal that the nationalization of Hunt's properties was not a purely commercial act within the *Dunhill* exception.

tion by Cuba of a purely commercial debt arising out of commercial trading activities did not, under the circumstances of that case, amount to the act of a sovereign government in its capacity as a sovereign. Stated otherwise, the Court held that under the facts of that case, no "act of state" had been shown. The facts of *Dunhill* were the following. Dunhill bought Havana cigars from a Cuban cigar manufacturer. Thereafter, Cuba expropriated the cigar business, and after the expropriation Dunhill mistakenly paid Cuba for cigars purchased prior to expropriation. The lawsuit involved the former owners of the cigar business, Dunhill, and Cuba, with the former owners seeking recovery for the cigars purchased by Dunhill, and Dunhill seeking recovery over against Cuba for the mistakenly paid funds. It appeared that the only alleged "act of state" was the Cuban Government's denial of liability and refusal to make payment. In holding that there had been a failure to show an act of state had taken place, the Court stated at 425 U.S. 682, 694-95:

> As the District Court found, the only evidence of an act of state other than the act of nonpayment by interventors was 'a statement by counsel for the interventors, during trial, that the Cuban Government and the interventors denied liability and refused to make repayment.' *Menendez* v. *Faber, Coe & Gregg, Inc.,* 345 F. Supp., at 545. But this merely restated respondents' original legal position and adds little, if anything, to the proof of an act of state. No statute, decree, order, or resolution of the Cuban Government itself was offered in evidence indicating that Cuba had repudiated its obligations in general or any class thereof or that it had as a sovereign matter determined to confiscate the amounts due three foreign importers.

Thus, *Dunhill* recognized that even the repudiation of the "commercial" account could be an act of state if done

pursuant to sovereign determination, evidenced by "statute, decree, order or resolution of the . . . government." In evidence in the present case is a copy of the very nationalization law issued by the sovereign government of Libya (Appendix G to Petition for Writ of Certiorari). In addition, Hunt once against must confront *Hunt* v. *Mobil Oil Corp.,* 550 F.2d 68, *supra,* which states, at pages 72-73, 79:

> Whatever great expectations appellants may have anticipated from the Supreme Court's decision in *Alfred Dunhill of London* v. *Republic of Cuba,* 425 U.S. 682, 96 S.Ct. 1854, 48 L.Ed.2d 301 (1976) . . . have been blighted. *Dunhill* reaffirmed the [act of state] doctrine in traditional terms, announcing that it 'precludes the courts of this country from inquiring into the validity of the *public* acts of a recognized foreign sovereign power committed within its own territory.' *Banco Nacional de Cuba* v. *Sabbatino* . . .
>
> * * *
>
> Hunt is not within its [*Dunhill's*] purely commercial exception and *Sabbatino* remains unblemished . . . (emphasis by the Court)

Hunt's reference at Page 25 of his Petition to the act of state doctrine as an "outdated doctrine of abstention," further emphasizes his total unwillingness and inability to recognize the true role of the doctrine. In *Hunt* v. *Mobil Oil Corp., supra,* the United States District Court for the Southern District of New York and the United States Court of Appeals for the Second Circuit have relied on the doctrine in refusing to inject the United States federal judiciary into a particularly complex issue of international affairs which is the responsibility of the executive branch, whether or not the executive branch wants to accept the responsibility. Similarly, in the present case, the 133rd Judicial District Court of Harris County, Texas; the Court of Civil Appeals for the Fourteenth Supreme Judicial District of

Texas at Houston; and the Supreme Court of Texas have relied on the doctrine to the same end. This Court should confirm the wisdom of those five state and federal courts by denying Hunt's petition.

5. The Hickenlooper Amendment Does Not Apply To This Case.

In arguing for application of the Hickenlooper Amendment to the facts of this case, Hunt urges the Court to adopt a liberal view toward its application, even to the extent of ignoring the "technicalities of property law." This not only is inconsistent with our courts' historic view of the amendment, but also is inconsistent with this Court's extreme caution to sit in judgment of the acts of a foreign state committed within its own territory. This wise caution is demonstrated by every act of state case decided by the Court since the doctrine was formulated in *Underhill* v. *Hernandez, supra.*

In *Occidental Petroleum Corp.* v. *Buttes Gas & Oil Co.*, 331 F.Supp. 92, 112 (C.D. Cal. 1971), *aff'd* 461 F.2d 1261 (9th Cir.), *cert. denied* 409 U.S. 950 (1972), the trial court, speaking of the amendment stated:

> The legislation has been strictly construed, and courts have continued to rely upon act of state in cases deemed not precisely fitting the statutory language.

The statute requires a "claim of title or other right to property . . . asserted . . . based upon (or traced through) a confiscation or other taking . . . in violation of the principles of international law . . . ." 22 U.S.C. § 2370(e)(2). It has specifically been held that the statute only applies when a claim is being asserted to specific property that was expropriated abroad, and not to the mere breach by a foreign government of a contract between it and a United States

citizen. *Occidental of Umm al Qaywayn, Inc.* v. *Cities Service Oil Co.*, 396 F. Supp. 461, 471 (W.D. La. 1975), *dism'd in part and rev'd in part sub nom. Occidental of Umm al Qaywayn, Inc.* v. *A Certain Cargo, Etc.*, 577 F.2d 1196 (5th Cir. 1978), *cert. denied* ..... U.S. ....., 99 S.Ct. 2857 (1979); *French* v. *Banco Nacional de Cuba*, 23 N.Y.2d 46, 242 N.E.2d 704 295 N.Y.S.2d 433 (1968); *Present* v. *United States Life Insurance Co.*, 96 N.J. Super. 285, 232 A.2d 863 (1967), *aff'd* 51 N.J. 407, 241 A.2d 237 (1968). In *French*, 242 N.E.2d at 712, the Court stated:

> The law is restricted, manifestly, to the kind of problem exemplified by the *Sabbatino* case itself, *a claim of title or other right to specific property which has been expropriated abroad.*

Likewise, in *Present*, 232 A.2d at 872, it is stated:

> The cited statute is operative only in those cases dealing with the enforcement of claims of persons whose property is asserted to have been confiscated or expropriated . . . .

Thus, the Texas courts were faced at the outset with the duty to determine whether specific property (the oil produced from the area of Concession No. 65 *after* the nationalization) had been expropriated by the nationalization decree. This leads, inevitably, to a determination of the nature of the interest granted to Hunt by the Concession Agreement and whether such Concession Agreement gave to Hunt specific property rights in the oil which were later expropriated by the nationalization. The Texas courts had to decide this question with relation to some body of law. As he is urging this Court to do, Hunt urged the Texas courts to ignore any "technicalities of property law" and to apply the Hickenlooper Amendment simply on assertions of wrongdoing by the Libyan Government. Such a holding

would, of course, make the act of state doctrine inapplicable in any case involving an act of state which resulted in financial loss or harm to the claimant, and, in effect would destroy the doctrine.

It was not the Texas courts' job to compensate Hunt for the alleged wrongs done by Libya. Rather, it was their function to adjudicate the rights of totally private parties, and in doing so they ran inevitably into the act of state doctrine and the applicability of the Hickenlooper Amendment. It may be entirely proper in a proceeding before an International Arbitration Tribunal or the International Court of Justice between a state and the interests of an alien whose property has been expropriated, where the tribunal is unfettered by the act of state doctrine or the particular wording of the Hickenlooper Amendment, to ignore the "technicalities of property law" where a wrong has been committed. However, it is manifestly not proper to do so in a proceeding in the municipal courts of the United States between totally private parties.

In deciding whether specific property (the oil in strata) had been expropriated from Hunt, the Texas courts' attention turned immediately to the internal laws of Libya, as it was there that the Concession was entered into and the alleged conversion occurred. Hunt's urging that the trial court should disregard the technicalities of Libyan property law and fashion a remedy to compensate Hunt for Libya's alleged wrong invoked the following remarks by Judge Pressler at the conclusion of the hearing in the trial court:

> So, this, to me, seems a very basic question as to what the law of Libya is, whether we can superimpose international law on such a basic thing as the very nature of property within a nation, and if we can superimpose international law upon the basic laws of the nation with the excuse that we are doing it to enforce

> rights of aliens, then, what will the future bring with international law supervening domestic law and municipal law on a multitude of other matters?
>
> A contract was entered into between Hunt and Libya. This court can give nothing further than that which Hunt received in the contract with Libya, and so if I am convinced that Hunt received nothing more through his contract than the right to produce, how can this court expand that right to an ownership by some principle of international law?
>
> Basically, can international law allow the courts of one nation to go into a second nation and rewrite the laws of the second nation because the courts of the first nation do not like the results which occur when a citizen of the first nation has operated under the laws of the second nation?

The trial court, and ultimately the Texas Court of Civil Appeals and the Texas Supreme Court, held that reference must be made to the internal laws of Libya to determine whether or not specific property was taken from Hunt to which claim was being made in the suit for the purpose of deciding the applicability of the Hickenlooper Amendment. It is respectfully submitted that to do otherwise would be to allow the exception to swallow the rule. If our courts are cut free to fashion "property rights" for the purpose of the Hickenlooper exception to the act of state doctrine where none otherwise existed under the law of the host country, then, as a practical effect there is no act of state doctrine and our courts are free to adjudicate the validity of the act of a foreign state in any case.

It is respectfully submitted that the cases cited above correctly hold that the Hickenlooper Amendment is only applicable when claim is laid in the courts of this country to specific property that has been expropriated abroad, and that the lower courts in this case correctly held that whether

or not Hunt had title to oil and gas in place underlying the concession area must be decided by reference to Libyan law. When reference is made to Libyan law, it is clear from the opinion of Dr. Hassan Baghdadi appearing as Appendix B to this Brief in Opposition that the lower courts correctly held that under Libyan law Hunt had no title or property right to the unproduced oil.

There is yet another reason why the Hickenlooper Amendment has not been shown to be applicable to this case. The legislative history of the bill makes it clear that it was intended by Congress to apply only when specific expropriated property comes into the United States. *See* Senator Hickenlooper and Congressman Adair's comments reprinted in ***French*** v. ***Banco Nacional de Cuba,*** 23 N.Y.2d 46, 242 N.E.2d 704, 713-714, 295 N.Y.S.2d 433 (1968). In this case, it was stipulated by the parties that Coastal States transported all of the crude it purchased from Libya to a refinery in Italy where it was processed. It was further stipulated that quantities of products derived under Coastal States' processing agreement with the refinery accumulated to Coastal States' account at the refinery, and *"were sold by Coastal States to third parties."* (Appendix to Petition for Writ of Certiorari E8). Under the rationale of the *French* case, specific expropriated property must be brought to the United States, and that very property must be made the subject of the litigation before the Hickenlooper Amendment can have any application.

6. The Bernstein Exception No Longer Exists — If It Ever Existed — And Has No Application To This Case.

Hunt argues for the application of the *Bernstein* exception to the act of state doctrine.[6] The *Berstein* exception

[6] *Bernstein* v. *N. V. Nederlandsche-Amerikaansche Stoomvaart-Maatschappij*, 173 F.2d 71 (2d Cir. 1949), *modified* 210 F.2d 375 (2d Cir. 1954).

—to the extent it ever existed — was based upon the notion that if the State Department communicates to a court that the court's passing on the validity of a particular act of a foreign state will not interfere with executive policy, then the court could consider itself free to decide the issue. Hunt admits that in view of *First National City Bank* v. *Banco Nacional de Cuba,* 406 U.S. 759, 92 S.Ct. 1808, 32 L.Ed.2d 466 (1972), the *Bernstein* exception is uncertain. Hunt sees uncertainty where most conclude fatality. The author of the summary appearing before the separate opinions of the Justices in that case at 32 L.Ed.2d 466 states that:

> Although unable to agree on an opinion, differing majorities of the court agreed (1) that the court should not approve the Bernstein exception to the act of state doctrine as a valid exception to the doctrine . . . .

Contrary to Hunt's statement on Page 33 of his Petition that two Justices — one of whom was Justice Powell — "expressed reservations about the exception," Justice Powell stated in his opinion:

> While Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 419-420, 84 S.Ct. 923, 935-936, 11 L.Ed.2d 804 (1964) technically reserves the question of the validity of the Bernstein exception, Bernstein v. N. V. Nederlandsche-Amerikaansche, 210 F.2d 375 (C A 2 1954), as Mr. Justice BRENNAN notes in his dissenting opinion, the reasoning of *Sabbatino* implicitly rejects that exception. Moreover, I would be uncomfortable with a doctrine which would require the judiciary to receive the Executive's permission before invoking its jurisdiction. Such a notion, in name of the doctrine of separation of powers, seems to me to conflict with that very doctrine.

406 U.S. at 773.

Moreover, Justices Brennan, Stewart, Marshall and Blackmun, in their dissenting opinion state:

> The Court today reverses the judgment of the Court of Appeals for the Second Circuit which declined to engraft the so-called 'Bernstein' exception upon the act of state doctrine as expounded in Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964). The Court, nevertheless, affirms the Court of Appeals rejection of the *'Bernstein'* exception. Four of us in this opinion unequivocally take that step, as do Mr. Justice DOUGLAS and Mr. Justice POWELL in their separate opinions concurring in the result or judgment.

406 U.S. at 776-777.

The existence of a *Bernstein* exception is, of course, inconsistent with the above-noted reasoning of the Court in *Sabbatino* that:

> Even if the State Department has proclaimed the impropriety of the expropriation, the stamp of approval of its view by a judicial tribunal, however impartial, might increase any affront and the judicial decision might occur at a time, almost always well after the taking, when such an impact would be contrary to our national interest.

Banco Nacional de Cuba v. *Sabbatino,* 376 U.S. 398, 432 (1964).

In view of *Sabbatino's* reasoning and *First National City Bank's* holding, the Texas courts in the present case correctly concluded that the *Bernstein* exception "is no longer viable." *Hunt* v. *Coastal States Gas Producing Co.*, 570 S.W.2d 503, 507 (Tex. Civ. App. — Houston [14th Dist.] 1978), *aff'd* 583 S.W.2d 322 (Tex. Sup. 1979).

Additionally, there is serious doubt as to whether there was a *Bernstein* exception. The Supreme Court in *Sabbatino* noted: "We do not now pass on the Bernstein exception, *but even if it were deemed valid,* its suggested extension is unwarranted." 376 U.S. 398, 436. The Second Circuit noted in its opinion in *Banco Nacional de Cuba* v. *First National City Bank,* 442 F.2d 530, 535 (2d Cir.), *rev'd* 406 U.S. 759, 92 S.Ct. 1808, 32 L.Ed.2d 466 (1972):

> . . . the *Bernstein* exception has been an exceedingly narrow one. Prior to the present case, a 'Bernstein letter' has been issued only once — in the *Bernstein* case itself. Moreover, the case has never been followed successfully; it has been relied upon only twice, and in both of these instances, by lower courts whose decisions were subsequently reversed.

Other cases, decided during the *Bernstein* era, failed even to pay it lip service. For example, the Court in *Occidental Petroleum Corp.* v. *Buttes Gas & Oil Co.,* 331 F.Supp. 92, 112 (C. D. Cal. 1971), *aff'd* 461 F.2d 1261 (9th Cir.), *cert denied* 409 U.S. 950 (1972), described the Hickenlooper Amendment as "by its terms extremely narrow, and in all other cases the act of state doctrine remains the law of the land."

Once again, return must be made to *Hunt* v. *Mobil Oil Corp.,* 550 F.2d 68, *supra* at 77-78, where Hunt's own *Bernstein* exception arguments are completely refuted as follows:

> In sum, the United States has officially characterized the motivation of the Libyan government, the very issue which Hunt now seeks to adjudicate here . . . The American judiciary is being asked to make an inquiry into the subtle and delicate issue of the policy of a foreign sovereign, a Serbonian Bog, precluded by the act of state doctrine as well as the realities of the fact finding competence of the court in an issue of far reaching national concern.
>
> * * *
>
> The act of state rubric then is perceived by the Supreme Court as a judicial articulation of the separation of powers doctrine and its application here is particularly appropriate since the executive branch has already

> determined the validity of the very act *sub judice* and has necessarily identified its motivation. Another inquiry could only be fissiparous, hindering or embarrassing the conduct of foreign relations which is the very reason underlying the policy of judicial abstention expressed in the doctrine in issue.

If the *Bernstein* exception ever did exist, the generally accepted view is that it must spring from a direct communication from the State Department to the court considering the matter. This requirement is described and explained in the *amicus curiae* brief of the United States filed in *Banco Nacional de Cuba* v. *Sabbatino,* 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964), which is reprinted in INT'L LEG. MAT'S 1009 (1963). This is entirely consistent with the policy of the act of state doctrine, and finds tacit recognition in the courts which speak in terms of a "*Bernstein* letter." *See Banco Nacional de Cuba* v. *Sabbatino, supra.* In the present case, there was no direct communication to the trial court. It should further be noted that the State Department communications on which Hunt relies are more than three years old and deal with one of the most volatile subjects (energy) and one of the most volatile areas (North Africa and the Middle East) in the world today.

Hunt's misleading statement at Page 33 of his Petition that "[t]he *Bernstein* case has never been overruled," must be balanced by the fact that the *Bernstein* case has never been successfully followed. While Coastal States doubts that Hunt is qualified to make the sweeping statements he has made concerning the State Department's view of the act of state doctrine (Hunt's Petition, pp. 33-34), even if Hunt were correct, the application of the judicially created act of state doctrine should not be controlled by pronouncements from the State Department. The doctrine exists as much to protect the independence of the judiciary as that

of the State Department. Hunt totally fails to recognize the crucial role which the doctrine plays in preserving the separation of powers, and would almost have this Court's judgment controlled by the pronouncements of the State Department. If the *Bernstein* exception ever did exist, it should be eliminated if, as Hunt argues, it allows the executive branch to dictate to the judicial branch which cases the latter can and cannot consider.

7. Hunt's Settlement Agreement With and Release of Libya Also Releases this Purely Derivative Claim.

Last, the writ should not be granted because Hunt's settlement with Libya of all outstanding issues concerning the nationalization also had the effect of releasing this purely derivative claim against Coastal States. On May 19, 1975, Hunt entered into a Settlement Agreement with the Government of Libya. The Agreement appears as Appendix D to this Brief in Opposition, and provides in pertinent part:

> Hunt has reached agreement with the Government on compensation in the full and final settlement of all outstanding rights and differences between them, including differences relating to Law Number 42 for the year 1973 and on the nationalization of the rights of Nelson Bunker Hunt in Concession No. (65).

In return for the payment of a stipulated sum of money . . .

> Hunt shall further acknowledge and admits that it has terminated all its rights and that it has no further rights against the Libyan Arab Republic, its agencies or corporations as from this date.

This Agreement is a complete bar to Hunt's pursuing the present action.

Hunt argued before the courts below that because the Settlement Agreement did not specifically release Coastal

States, it must have implicitly reserved his right to pursue the present case. No such reservation appears in the language of the Settlement Agreement, and it is simply unbelievable that if Hunt intended to reserve such a crucial right, he would not have reserved it *explicitly.*

The stated purpose of the Settlement Agreement was to settle "*all outstanding rights of Hunt.*" Such rights would include all rights derived from either the Concession or the nationalization. In the present action, Hunt seeks to assert rights based on the Concession, and relies heavily on the invalidity of the nationalization. When the original claim is extinguished by settlement, derivative claims are concluded as well. *Tyrrell Rice Milling Co.* v. *McFaddin-Wiess-Kyle Land Co.,* 32 S.W.2d 393 (Tex. Civ. App. — Beaumont 1930, no writ). Therefore, by settling the entire dispute with Libya concerning the nationalization, Hunt has precluded himself from pursuing actions which derive from the nationalization.

Hunt also sought to complain before the lower courts that he received inadequate compensation. It is well established in Texas that courts will not inquire into the adequacy of a settlement agreement. *Wedegartner* v. *Reichert,* 218 S.W.2d 304 (Tex. Civ. App. — Waco 1949, writ ref'd. n.r.e.). The agreement to compromise is in and of itself a valuable consideration, and is thus sufficient to support a settlement agreement. *See Williams* v. *Employers Mutual Casualty Co.,* 368 S.W.2d 122 (Tex. Civ. App. — San Antonio 1963, no writ). The consideration in such a case is the release of the rights of the parties and the avoidance of a lawsuit. *The Shield Co.* v. *Williamson,* 355 S.W.2d 811 (Tex. Civ. App. — Fort Worth 1962, no writ).

Hunt has argued that the release of Libya did not release Coastal States. The authorities Hunt has relied upon are easily distinguishable since they are joint tortfeasor cases.

Hunt himself argues in the present case that the initial wrong was Libya's nationalization, and that the wrongfulness of Coastal States' actions derives from the nationalization. Thus, Hunt's own theory of this case is that Coastal States' wrong derives from Libya's wrong, and not that Coastal States and Libya are joint tortfeasors. Consequently, Hunt's authorities concerning settlement with joint tortfeasors are irrelevant. The controlling authorities are those cases which hold that settlement of the initial claim precludes pursuit of derivative claims. *Tyrrell Rice Milling Co.* v. *McFaddin-Wiess-Kyle Land Co.,* 32 S.W.2d 393 (Tex. Civ. App. — Beaumont 1930, no writ).

CONCLUSION AND PRAYER

This case does not present a substantial federal question to support a granting of the writ, in that the state courts could reach the same result as they did reach, even if their interpretations of the act of state doctrine and the Hickenlooper Amendment were wrong and were corrected by this Court.

In addition, this Court has recently reaffirmed the act of state doctrine, and no reason appears why the Court should once again write on the subject.

Furthermore, even if there exists a substantial federal question, the Texas courts' judgments were right because the act of state doctrine applies. Even if the *Sabbatino* Court directed that the act of state doctrine not be applied in the face of "a treaty or other unambiguous agreement regarding controlling legal principles," no such agreement exists here. Nor can the act of the Libyan state in nationalizing Concession No. 65 be considered "commercial activity" to take its act of nationalization out of the category of an act of state. Furthermore, neither the Hickenlooper Amend-

ment nor any other so-called exception to the act of state doctrine applies to the facts of this case.

Last, Hunt's settlement with Libya of all outstanding issues concerning the nationalization, and the legal effect of such is to foreclose Hunt from pursuing this purely derivative claim against Coastal States.

Coastal States respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

By .....
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CERTIFICATE OF SERVICE

We, Dan Matthews and Daniel K. Hedges, members of the Bar of the Supreme Court of the United States, do hereby enter our appearance in this cause on behalf of Respondents Coastal States Gas Producing Company and Coastal States Marketing, Inc.

In accordance with Rule 33 of the Rules of the Supreme Court of the United States the undersigned hereby certifies that three (3) copies of the foregoing Brief in Opposition have been served on A. B. Conant, Jr., counsel for petitioners Nelson Bunker Hunt, Herbert Hunt and Lamar Hunt, by depositing the same in the United States Post Office, with first class postage prepaid, addressed to A. B. Conant, Jr., Shank, Irwin, Conant, Williamson & Grevelle, 3100 First National Bank Building, Dallas, Texas 75202, on the ..... day of November, 1979.

.....
DAN MATTHEWS